



Virginia  
Regulatory  
Town Hall

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Virginia Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-700-10 et seq.
<b>Regulation Title:</b>	Child Protective Services Central Registry Information
<b>Action Title:</b>	Conforming Amendments
<b>Date:</b>	8/24/98

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

Amendments to this regulation are necessary to ensure that 22 VAC 40-705-10 et seq. is consistent with the regulation entitled Child Protective Services (22 VAC 40-700-10 et seq.), which requires "preponderance of the evidence" for a Founded Disposition, and to ensure consistency with the Virginia Court of appeals decision of *Jackson v. Marshall*. That decision determined that only categories of "Founded" and "Unfounded" are allowed under Code of Virginia, Section 63.1-248. The Department officially ceased use of the "Reason to Suspect" category on March 9, 1995, as a result of this court decision and purged all such findings from the Central Registry. This action is requested as a result of an approved Executive Order 25 regulation review that required review of all existing agency regulations.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

Code of Virginia sections 63.1-25 and 63.1-248.1 et seq. provide statutory authority to the State Board of Social Services to promulgate the regulation regarding Central Registry. With amendments, this regulation will not exceed the scope of the mandate.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

This regulation provides for tracking of individuals who have abused or neglected a child. Any person who is determined by child protective services (CPS) to have committed an act of child abuse or neglect and any child determined to be a victim of same, may have information about his identity and about the abuse/neglect maintained in the Central Registry for a time period established in regulation. Central Registry searches (for other than a CPS investigation) cannot be conducted unless an individual being searched has authorized the search or a court has ordered the search. Persons whose names are found as abusers in the Central Registry may not be allowed to be employed in the day-to-day operations of a child welfare agency. The Code of Virginia (63.1-195) defines child welfare agencies as a child day care center, child day center system, child placing agency, child caring institution, family day home, family day system or foster home. Additionally, the child who is named in the Central Registry may be impacted in that the history is available to the CPS worker who receives a new complaint and may enable the worker to make appropriate decisions and ensure the safety of all victim children.

Thus, it is important to both adults and children involved in CPS investigations that the information contained in the Central Registry is accurate, and it is important that the information be retained according to current regulations. This regulation must be updated to make it current with requirements of the base regulations for CPS.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

This action is requested as the result of an approved Executive Order 25 regulation review. Since the last review of this particular regulation in 1995, there were two extensive reviews completed of the entire CPS program, which looked at the Central Registry: (1) a legislative subcommittee fulfilling House Joint Resolution 502, and (2) the State Board of Social Services subcommittee on CPS. Although many recommendations were made as a result of these

reviews, including new CPS regulations, neither produced a recommendation to change the Central Registry regulation. It simply needs to be updated.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

Since the changes requested to this regulation are already in practice, there will not be any impact except to make all CPS regulations consistent. The change to the CPS program that removed the dispositional option of "Reason to Suspect" affected families in that CPS agencies now must make a disposition of "Founded" or "Unfounded; there is no middle ground." The change in the standard of evidence from "clear and convincing" to "preponderance of evidence" put Virginia in line with all the other states in regard to the level of evidence required for a "Founded" complaint.

The CPS program is predicated on having a positive impact on children and families. The major goal is to strengthen families so that parents, whenever possible, can protect their own children, meeting the child's needs for nurturance, discipline, education, and so on, to the degree possible, sometimes with the benefit of needed services. These amended regulations do not change the goals of CPS.